

John H. L'Estrange, Jr. (State Bar No. 049594)
 WRIGHT & L'ESTRANGE
 401 West A Street, Suite 2250
 San Diego, CA 92101
 Office: (619) 231-4844
 Direct: (619) 702-8200
 Fax: (619) 231-6710

Gerald F. Ivey (*pro hac vice*)
 Bryan C. Diner (*pro hac vice*)
 P. Andrew Riley (*pro hac vice*)
 Sarah J. Sladic (*pro hac vice pending*)
 FINNEGAN, HENDERSON, FARABOW,
 GARRETT & DUNNER, L.L.P.
 901 New York Ave.
 Washington, DC 20001
 Telephone: (202) 408-4000
 Facsimile: (202) 408-4400

Robert L. Burns (*pro hac vice*)
 FINNEGAN, HENDERSON, FARABOW,
 GARRETT & DUNNER, L.L.P.
 11955 Freedom Drive, Suite 800
 Reston, VA 20190-5675
 Telephone: (571) 203-2700
 Facsimile: (202) 408-4400

Attorneys for Defendant AMBU INC.

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA

THE LARYNGEAL MASK COMPANY LTD.
 AND LMA NORTH AMERICA, INC.,

Plaintiffs,
 v.

AMBU A/S, AMBU INC., AMBU LTD., and
 AMBU SDN. BHD.,

Defendants.

AMBU INC.,

Counterclaimant,

v.

THE LARYNGEAL MASK COMPANY LTD.
 AND LMA NORTH AMERICA, INC.,

Counter-Defendants.

CASE NO. 07 CV 1988 DMS (NLS)

**DEFENDANT AMBU INC.'S
 ANSWER AND
 COUNTERCLAIMS (WITH
 CAPTION) TO PLAINTIFFS'
 FIRST AMENDED COMPLAINT
 FOR PATENT INFRINGEMENT**

JURY TRIAL DEMANDED

1 Defendant Ambu Inc. by and through its attorneys, hereby answers the First Amended
2 Complaint for Patent Infringement ("the Amended Complaint") of Plaintiffs The Laryngeal Mask
3 Company Ltd. and LMA North America, Inc. (collectively "Plaintiffs") as follows:

4 **JURISDICTION AND VENUE**

5 1. Ambu Inc. admits that the Amended Complaint purports to allege claims for patent
6 infringement under the patent laws of the United States (Title 35 of the United States Code).

7 2. Ambu Inc. admits that this Court has subject matter jurisdiction, pursuant to
8 28 U.S.C. §§ 1331 and 1338(a).

9 3. Ambu Inc. admits for the purpose of this litigation, venue is proper in this Court under
10 28 U.S.C. §§ 1391(b), (c) and (d) and under 28 U.S.C. § 1400 (b), and denies all other allegations
11 contained in Paragraph 3.

12 **THE PARTIES**

13 4. Ambu Inc. is without sufficient knowledge or information to form a belief as to the
14 truth of the allegations in Paragraph 4, and therefore demands strict proof as to each allegation.

15 5. Ambu Inc. admits only that United States Patent No. 5,303,697 ("the '697 patent")
16 issued on April 19, 1994, and that United States Patent No. 7,156,100 ("the '100 patent") issued
17 on January 2, 2007. Ambu Inc. admits only that The Laryngeal Mask Company Ltd. ("LMC") is
18 listed as the owner by assignment of the '697 patent and the '100 patent. Upon information and
19 belief, Ambu Inc. denies that the '697 and '100 patent were duly and lawfully issued.

20 6. Ambu Inc. is without sufficient knowledge or information to form a belief as to the
21 truth of the allegations in Paragraph 6 and therefore demands strict proof as to each allegation.

22 7. Admitted.

23 8. Ambu Inc. admits only that it is a corporation organized and existing under the laws of
24 the State of Maryland with its principal place of business at 6740 Baymeadow Drive, Glen
25 Burnie, Maryland 21060, and demands strict proof as to all other allegations contained in
26 Paragraph 8.

1 9. Ambu Inc. admits only that Ambu Ltd. is a corporation organized and existing under
2 the laws of the People's Republic of China with its principal place of business at Warehouse &
3 Process Complex Building, No. C, Xiang Yu F.T.Z. Xiamen, 361006 China, and demands strict
4 proof as to all other allegations contained in Paragraph 9.

5 10. Ambu Inc. admits only that Ambu Sdn. Bhd. is a corporation organized and existing
6 under the laws of Malaysia with its principal place of business at Lot 69B, Lintang Bayan Lepas
7 6, Phase IV, 11900 Penang, Malaysia, and demands strict proof as to all other allegations
8 contained in Paragraph 10.

9 11. Ambu Inc. admits only that it distributes, imports, offers to sell, and sells in the United
10 States certain laryngeal mask airway devices that Plaintiffs allege infringe the '697 patent and the
11 '100 patent, including the Ambu AuraOnce, Aura40, AuraFlex, and AuraStraight brands of
12 laryngeal mask airway devices. Ambu Inc. denies and demands strict proof of all other
13 allegations contained in Paragraph 11.

14 12. Ambu Inc. admits only that it does business in this judicial district and denies and
15 demands strict proof of all other allegations contained in Paragraph 12.

16 **ANSWER TO FIRST CLAIM FOR RELIEF**

17 13. Ambu Inc. realleges and incorporates by reference its responses as set forth herein in
18 Paragraphs 1 through 12 above.

19 14. Denied.

20 15. Ambu Inc. denies that it had actual knowledge of the '697 patent prior to the alleged
21 acts of infringement.

22 16. Denied.

23 17. Denied.

24 18. Denied.

25 **ANSWER TO SECOND CLAIM FOR RELIEF**

26 19. Ambu Inc. realleges and incorporates by reference its responses as set forth herein in
27 Paragraphs 1 through 12 above.

28

1 20. Denied.

2 21. Ambu Inc. denies that it had actual knowledge of the '100 patent prior to the alleged
3 acts of infringement.

4 22. Denied.

5 23. Denied.

6 24. Denied.

7 **PRAYER FOR RELIEF**

8 Ambu Inc. hereby denies that Plaintiffs are entitled to judgment on any allegations or
9 counts asserted in the Complaint or the First Amended Complaint, and further denies that
10 Plaintiffs are entitled to the relief requested in the Complaint or the First Amended Complaint

11 Ambu Inc. further avers that any allegations not deemed to be specifically addressed in this
12 Answer are hereby denied.

13 **AFFIRMATIVE DEFENSES**

14 **First Affirmative Defense**

15 25. Upon information and belief, Ambu Inc. has not infringed and does not infringe, either
16 directly, contributively, or by inducement, any valid claim of the '697 or '100 patents
17 (collectively "the Patents-in-Suit"), either literally or under the doctrine of equivalents.

18 **Second Affirmative Defense**

19 26. Upon information and belief, the Patents-in-Suit are invalid for failure to meet the
20 requirements of one or more sections of Title 35, United States Code, and/or Title 37, Code of
21 Federal Regulations, including but not limited to one or more of 35 U.S.C. §§ 102 and 103.

22 Ambu Inc. reserves the right to amend its defenses further as additional information is
23 developed through discovery or otherwise.

24 **REQUEST FOR RELIEF**

25 Ambu Inc. prays that this Court enter judgment against Plaintiffs:

26 A. Dismissing Plaintiffs Amended Complaint with prejudice;

27 B. Declaring that Plaintiffs recover nothing from Ambu Inc.;

1 C. Awarding Ambu Inc. its costs and disbursements in this action; and

2 D. Granting Ambu Inc. such other and further relief as this Court deems just and proper.

3 **COUNTERCLAIMS**

4 Ambu Inc. asserts the following counterclaims:

5 1. Ambu Inc. incorporates by reference its responses and allegations as set forth herein in
6 Paragraphs 1 through 26 above.

7 **The Parties**

8 2. Defendant and counterclaimant Ambu Inc. is a corporation organized and existing
9 under the laws of the State of Maryland with its principal place of business at 6740 Baymeadow
10 Drive, Glen Burnie, Maryland 21060.

11 3. Plaintiff The Laryngeal Mask Company Ltd. ("LMC") has alleged in Paragraph 4 of
12 the Amended Complaint that it is a corporation organized and existing under the laws of the
13 Republic of Seychelles with its principal place of business at Le Rocher, Mahé, Seychelles.
14 Plaintiff LMA North America, Inc. ("LMNA") has alleged in Paragraph 6 of the Amended
15 Complaint that it is a corporation organized and existing under the laws of the State of Nevada
16 with its principal place of business at 4660 La Jolla Village Drive, San Diego, California 92122,
17 and that it is an affiliate of LMC.

18 4. Plaintiff LMC has alleged in Paragraph 5 of the Amended Complaint that it is the
19 owner by assignment of the Patents-in-Suit.

20 5. Plaintiff LMNA has alleged in Paragraph 6 of the Amended Complaint that it is the
21 exclusive licensee of the Patents-in-Suit.

22 **Jurisdiction and Venue**

23 6. These counterclaims arise under the Federal Declaratory Judgment Act and the Patent
24 Laws of the United States, more particularly, under 28 U.S.C. §§ 2201 and 2202, and
25 35 U.S.C. §§ 100 *et seq.*, respectively. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331,
26 1338, and 2201.

8. Venue pursuant to 28 U.S.C. § 1391 in this judicial district for the following counterclaim of Ambu Inc. is proper because Plaintiffs have consented to this venue by asserting and filing claims of patent infringement against Ambu Inc.

Counterclaim for Declaratory Judgment

First Counterclaim

8 9. Upon information and belief, Ambu Inc. has not infringed and does not infringe, either
9 directly, contributively, or by inducement, any valid claim of the Patents-in-Suit, either literally or
10 under the doctrine of equivalents.

Second Counterclaim

12 10. Upon information and belief, the Patents-in-Suit are invalid for failure to meet the
13 requirements of one or more sections of Title 35, United States Code, and/or Title 37, Code of
14 Federal Regulations, including but not limited to one or more of 35 U.S.C. §§ 102 and 103.

REQUEST FOR RELIEF

16 Ambu Inc. prays that this Court enter judgment against Plaintiffs:

17 A. Declaring that Ambu Inc. has not infringed, either directly or indirectly, and is not
18 infringing either directly or indirectly, any valid claim of the Patents-in-Suit;

19 B. Enjoining Plaintiffs, its officers, agents, servants, employees, attorneys, and
20 representatives, and any successors and assigns thereof, from charging or asserting infringement of
21 any claim of the Patents-in-Suit against Ambu Inc. or anyone in privity with Ambu Inc.;

22 C. Declaring that the claims of the Patents-in-Suit are invalid;

23 D. Awarding Ambu Inc. its costs and disbursements in this action; and

24 E. Granting Ambu Inc. such other and further relief as this Court deems just and proper.

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Ambu Inc. demands a trial by jury on all claims, defenses, and counterclaims.

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER LLP

WRIGHT & L'ESTRANGE
Attorneys for Defendant AMBU INC.

By: /s/
John H. L'Estrange, Jr
Email: jlestrange@wllawsd.com

CERTIFICATE OF SERVICE

THE LARYNGEAL MASK COMPANY LTD. v. AMBU, et al.
U.S. District Court, Southern District, Case No. 07cv1988 DMS (NLS)

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; my business address is 401 West A Street, Suite 2250, San Diego, California 92101; and that I served the below-named persons the following documents:

DEFENDANT AMBU INC.'S ANSWER AND COUNTERCLAIMS (WITH CAPTION) TO PLAINTIFFS' FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT; JURY TRIAL DEMANDED

in the following manner:

1. By placing a copy in a separate Federal Express envelope, addressed to the addressee(s) named below. I am readily familiar with the practice of this firm for collection and processing of correspondence by Federal Express. Pursuant to this practice, correspondence would be deposited in the Federal Express box located at 401 West A Street, San Diego, California 92101, in the ordinary course of business on the date of this declaration.

2. By transmitting the document(s) via facsimile on the date of this declaration to only those persons as indicated below and that the transmission was reported as complete and without error. The phone number of the transmitting facsimile machine is (619) 231-6710.

3. xx By transmitting the document(s) via Notice of Electronic Filing through CM/ECF on the date of this declaration to those persons as indicated below.

The addressee(s) is (are) as follows:

Frederick S. Berretta, Esq.
 KNOBBE MARTENS OLSON and BEAR
 550 West C Street, Suite 1200
 San Diego, CA 92101
 619.235.8550
 619.235.0176 (fax)
fberretta@kmob.com

Vicki S. Veenker, Esq.
 SHEARMAN & STERLING LLP
 1080 Marsh Road
 Menlo Park, CA 94025
 (650) 838-3600
 (650) 838-3699 (fax)
vveenker@shearman.com

I declare under penalty of perjury under the laws of the United States and California that the foregoing is correct and that I am member of the bar of this court at whose direction the service was made. Executed on December 5, 2007.

s/John H. L'Estrange, Jr.
 Email: jlestrange@wllawdsd.com